

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**October 27, 2005**

<b>IN RE:</b>	)	
	)	
<b>PETITION OF INTEGRATED RESOURCE</b>	)	<b>DOCKET NO. 05-00055</b>
<b>MANAGEMENT UTILITY, INC. TO AMEND</b>	)	
<b>ITS CERTIFICATE OF CONVENIENCE AND</b>	)	
<b>NECESSITY</b>	)	

---

**ORDER APPROVING PETITION TO AMEND  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

---

This matter came before Chairman Ron Jones, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a Hearing held on September 26, 2005, to consider the *Petition of IRM Utility, Inc to Amend its Certificate of Convenience and Necessity* (the "*Petition*") requesting that the Authority amend its service area to include a portion of Sevier County, Tennessee known as Sterling Springs Subdivision

**Background**

On November 10, 2003, Integrated Resource Management Utility, Inc. d/b/a IRM Utility, Inc. ("IRM") received a certificate of public convenience and necessity ("CCN") in Docket No. 03-00467 to provide sewer service to two (2) customers in Sevier County, Tennessee.<sup>1</sup> Since that

---

<sup>1</sup> See *In re Application of Integrated Resource Management Utility, Inc. for a Certificate of Public Convenience and Necessity to Provide Wastewater Systems Services*, Docket No. 03-00467, *Order Approving Application for a Certificate of Public Convenience and Necessity, Tariff and Special Contract* (March 16, 2004)

time, through various other dockets, IRM has been granted approval to expand its service territory to include other areas of Tennessee.

On February 22, 2005, IRM filed the *Petition* to expand its service area to include a portion of Sevier County, Tennessee known as Sterling Springs Subdivision. At a regularly scheduled Authority Conference held on March 14, 2005, the voting panel assigned to this docket unanimously voted to appoint a Hearing Officer to hear preliminary matters prior to the Hearing and to set a procedural schedule to completion. The Authority issued Data Requests on March 11, July 15 and August 8, 2005. IRM provided responses to the Data Requests. The Hearing Officer issued a *Notice of Hearing* on September 15, 2005, noticing that the voting panel assigned to this docket would conduct a Hearing and deliberate the merits of the *Petition* on Monday, September 26, 2005, immediately following the regularly scheduled Authority Conference.

#### **Legal Standard for Granting Certificate of Public Convenience and Necessity**

No public utility is permitted to begin construction or operation of a new utility facility or service before obtaining approval of the TRA. The procedure for obtaining a CCN evidencing such approval is set forth in Tenn. Code Ann. § 65-4-201(a) (2004), which states as follows:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . . .

### **The Petition**

In the *Petition*, IRM requests an expansion of its authorized service area to include a portion of Sevier County, Tennessee known as Sterling Springs Subdivision. A map showing the area to which IRM proposes to extend its service is attached to the *Petition*. The system will be designed and constructed to serve forty-five (45) residential lots that will serve as vacation-style cabins for seasonal occupation, permanent residents and rental programs.<sup>2</sup> IRM states in the *Petition* that the subject area has received temporary plat approval in Sevier County. In its *Petition*, IRM also states that the Sevier County Commission and Water/Sewer Committee confirm that they have no intent to own, operate or provide wastewater treatment services to the area. In support of its contention, IRM attached a letter dated January 28, 2005 from Mr. Ken L. Maples, Assistant County Mayor of Sevier County, affirming that the Sevier County Commission and Water/Sewer Committee does not intend to provide sewer service to Sterling Springs Subdivision within the next twelve (12) months of the date of the letter.<sup>3</sup>

According to the *Corrected Commercial Rate Sheet and Territory Summary* filed by IRM on September 14, 2005, the residential rate of \$35.11 per month will apply unless the owner rents the unit to the public for any portion of the year. If that occurs, the commercial rate will apply and be determined according to IRM's approved tariff rate sheet, based on total projected gallons per day.

### **The September 26, 2005 Hearing**

Pursuant to Tenn. Code Ann. § 65-4-201(a) (2004), public notice of the Hearing in this matter was issued by the Hearing Officer on September 15, 2005. No persons sought

---

<sup>2</sup> *Responses to Tennessee Regulatory Authority's Data Requests*, p 1 (June 30, 2005)

<sup>3</sup> *Petition, Exhibit B* (February 22, 2005)

intervention prior to or during the Hearing. At the Hearing held on September 26, 2005, Mr. Jeffrey Cox, President of IRM, participated in the Hearing, presented testimony and was subject to examination by the panel assigned to this docket. Charles B. Welch, Jr., Esq. and Kristi Stout, Esq., Farris, Matthews, Branan, Bobango, Hellen & Dunlap, PLC, 618 Church Street, Suite 300, Nashville, Tennessee 37219, appeared on behalf of IRM. Based upon the presentation of IRM's proof and consideration of the evidentiary record as a whole, the panel found that IRM had met the requirements of Tenn. Code Ann. § 65-4-201 (2004) for the grant of a decentralized wastewater service CCN and that the proposed rates were the same as rates previously approved for IRM. However, the panel found that IRM had not received a state operating permit from the Tennessee Department of Environment and Conservation ("TDEC") Therefore, applying the standard set forth in Tenn. Code Ann. § 65-4-201 (2004), the panel voted unanimously to approve IRM's *Petition* subject to the receipt of a final approved state operating permit from TDEC. The panel further directed IRM to notify the Authority in writing upon receipt of its state operating permit.


**IT IS THEREFORE ORDERED THAT:**

1. The *Petition of IRM Utility, Inc. to Amend its Certificate of Convenience and Necessity* to expand its service area to include a portion of Sevier County, Tennessee known as Sterling Springs Subdivision, as shown in the map attached to the *Petition*, is approved subject to the receipt of a final approved state operating permit from the Tennessee Department of Environment and Conservation.
2. IRM Utility, Inc. is directed to notify the Authority in writing upon receipt of its state operating permit from the Tennessee Department of Environment and Conservation.

3. IRM Utility, Inc.'s rates for wastewater service for the Sterling Springs Subdivision shall be as filed in this docket.

4. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from the date of this Order.

5. Any party aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

  
\_\_\_\_\_  
Ron Jones, Chairman

  
\_\_\_\_\_  
Deborah Taylor Tate, Director

  
\_\_\_\_\_  
Pat Miller, Director